

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.52 OF 2007

Rasiklal K. Gandhi ..Petitioner.

V/s.

Venkatraman K. Bhomkar ..Respondent.

Mr.M.K. Nesari for petitioner.

Mr.R.D.Soni with D.F.Sharma for respondent.

CORAM : ABHAY S.OKA, J.

DATED : 11th APRIL, 2007.

P.C. :-

. The submissions of Mr.Nesari appearing for the petitioner were fully heard on 28th March, 2007. However, no order was not passed as Mr.Nesari appearing for the petitioner took time to take instructions whether the petitioner was desirous of praying for time to vacate. On 30th March, 2007 when the Revision applicant was called out, Mr.Nesari, learned advocate appearing for the petitioner again sought time. Accordingly this revision application was kept today. When the matter is called out today, Mr.Jain learned advocate appeared for the petitioner again sought time of one week to argue the revision application on merits. When the revision application was fully argued on 28th March, 2007, the petitioner could not have

engaged the services of another advocate when he knew fully well that the revision application was kept for passing orders after submissions were fully heard. After this factual position was brought to the notice of Mr.Jain, he stated that the petitioner had not informed him that the revision application was fully argued and, therefore, he accepted the matter. He stated that if he was aware that the revision application was fully argued, he would not have appeared in the case. Mr. Jain stated that Court may pass necessary orders and the petitioner is not interested in seeking time to vacate.

2. The challenge in this revision application is to a decree of possession passed by the Appellate Bench of the Court of Small Causes. By the said Judgment and decree, the suit filed by the respondent landlord has been decreed and the petitioner has been directed to hand over possession of the suit premises to the respondent.

3. The subject matter of the suit is room No.1 situated on the ground floor of the building in question. The suit was filed by the respondent on various grounds. One of the main grounds is bonafide requirement of the landlord. The arrears of rent is

another ground which was set up by the landlord. The decree was also sought on the ground of change of user.

4. Appeal Bench has passed a decree on the ground of bonafide requirement.

5. The case of the respondent is that he was staying in Block No.2 on the ground floor of the said building as a tenant. From the lifetime of his father, the respondent was carrying a laundry business behind the staircase of the building on the ground floor. According to the case of the respondent, his family consists of himself, his wife, three sons, their respective wives and two grand-children. According to the case of the respondent, one of his married son by the name Satish has shifted to Borivili as the respondent is not possessing adequate accommodation.

6. The submission of Mr.Nesari appearing for the petitioner was that when the suit premises was let out to the petitioner, there were 17 members in the family of respondent and now the number of members in the family is reduced to six. He submitted that the finding recorded by the Appeal Bench on the ground of comparative hardship was illegal. He submitted that the suit premises has been put to commercial use by the

petitioner and the same cannot be used for residential purpose as commercial premises cannot be converted into a residential premises. He submitted that, therefore, there could not be any decree on the ground of bonafide requirement in respect of the suit premises which is being admittedly used for commercial purpose.

7. I have carefully considered the submissions made by Mr.Nesari appearing for the petitioner. Mr. Nesari could not show any provision of law which prevented a landlord from using a commercial premises for residential purpose. Thus the said submission has no merit. The Appeal Bench has referred to the evidence of respondent. In the evidence, it is stated that besides the laundry shop, there are independent rooms in the building which are numbered as room Nos.1, Room No.2 and room No.3. Room No.1 is the suit premises. The Respondent is staying in room Nos.2 and 3. The size of each room is 10' x 12'. The room No.2 is occupied by the respondent / plaintiff along with members of the family for residence and room No.3 is used as a kitchen. One of the three married sons of respondent has shifted to Borivili. It is the case made out by the respondent that there is a temporary cabin in the laundry shop which is being used by his elder son and daughter-in-law for sleeping in the

night. The other son Bhalchandra sleeps in one room which is used as a living room and the respondent and his wife are using the kitchen as their bedroom. The Appeal Bench has recorded a finding of fact that respondent, his wife, his two sons, their respective wives, grand children are residing in the said two rooms and another son Satish along with his wife has shifted to Borivli. Considering the size of the family of the respondent and the accommodation in possession of the respondent, the Appeal Bench has accepted the case made out by the respondent of bonafide requirement. In my view, no fault can be found with the said finding of fact recorded by the Appeal Bench.

8. The Appeal Bench has also considered the issue of comparative hardship. The Appeal Bench has observed that the petitioner has not made any efforts to search for another accommodation after service of the summons. The Appeal Bench has also considered the evidence regarding the income of the respondent. Appeal bench has referred to the fact that the petitioner is holding a flat at Hanuman Building and having one godown at S.V.Marg, Grant road. The Appeal Bench has also considered that Satish, one of the sons of the respondent was required to shift to Borivili. The Appeal Bench found that the petitioner has not led

any evidence regarding his financial condition. Considering the aforesaid aspects, the finding recorded by the Appeal Court on the issue of comparative hardship is in favour of the respondent.

9. The findings of facts recorded by the Appeal Bench are based on appreciation of oral and documentary evidence on record. It is very difficult to find fault with the said findings in the Revisional jurisdiction under section 115 of the Code of Civil Procedure, 1908. Hence there is no merit in the Revision application and the same is rejected.

10. The learned advocate for the petitioner prays that the decree for possession may not be executed for a reasonable time. Considering the facts and circumstances of the case, decree for possession shall not be executed till 30th June, 2007 subject to the condition that petitioner will not create any third party interests in respect of the suit premises and will not part with the possession thereof and will continue to pay compensation.

(ABHAY S. OKA, J.)